

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2636

September Term, 2016

JOSEPH DAMION ROLAND

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 6, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Washington County convicted Joseph Damion Roland, appellant, of second-degree assault, attempted theft of property valued under \$1,000, and rogue and vagabond.¹ The court sentenced appellant to a prison term of ten years for assault and a suspended, consecutive three years for rogue and vagabond, to be followed by a three-year period of probation.² Appellant’s sole contention on appeal is that the court abused its discretion in prohibiting two defense witnesses from testifying. For the reasons stated below, we conclude that appellant waived this issue, and we affirm.

Briefly recounted, around 11:45 A.M. on January 14, 2016, Douglas Margevich pulled into the parking lot of Howard’s Art Supply in Hagerstown.³ Margevich observed a man wearing a black shirt, jeans, and a Pittsburgh Steelers knit cap looking into the windows and trying the door handles of two vehicles belonging to store employees. The man then opened the passenger-side door of a red Ford Mustang, which Margevich knew belonged to his in-laws. Margevich testified that the man, identified as appellant, was moving papers around and going through the center console and glovebox.

When Margevich approached appellant, he was holding several tax documents and CDs. Margevich asked appellant what he was doing, to which appellant responded that he

¹ Appellant was convicted of violating Maryland Code (2002, 2012 Repl. Vol., 2016 Suppl.), Criminal Law Article (“C.L.”), § 6-206(b), which provides: “A person may not be in or on the motor vehicle of another with the intent to commit theft of the motor vehicle or property that is in or on the motor vehicle.”

² The court merged the attempted theft conviction with rogue and vagabond for sentencing purposes.

³ Margevich is the owner of this business.

was taking items out of his car. Margevich then said, “Bullshit it’s your car. It’s my father’s car.” Appellant then opened the passenger-side door and put the items back. Margevich asked appellant to wait, but then appellant retrieved a gun from the waistband of his jeans and waved it in the air. Margevich retreated into the store and directed an employee to call police. Police later apprehended appellant at a nearby hotel. In searching the room, police recovered a black shirt, a Pittsburgh Steelers knit cap, and an air gun found behind a mini-fridge. Shortly after police arrested appellant, Margevich identified him in a show-up procedure as the man he had seen rummaging through his father-in-law’s vehicle.

During *voir dire*, defense counsel advised the court that there were two additional witnesses about whom the court needed to ask the potential jurors. The following colloquy then ensued:

[DEFENSE COUNSEL]: I have Matthew Gray, Betty Holfield.

THE COURT: Matthew Gray.

[DEFENSE COUNSEL]: And uh...

THE COURT: I’m sorry, tell me again. Betty . . .

[DEFENSE COUNSEL]: Betty Holfield. And the records custodian from Famous Pawn Shop, Dual Highway.

[PROSECUTOR]: Your Honor, could I have a proffer as to what Matthew Gray and the pawn shop person would testify to? Because this is the first I’m hearing about these witnesses.

[DEFENSE COUNSEL]: We – we – well you’ve heard about them. We didn’t file a formal list of witnesses. But I – I had mentioned Matthew Gray, one who is not here, shall be shortly . . .

[PROSECUTOR]: Can you tell me what . . .

[DEFENSE COUNSEL]: At the motel, uh, are not eyewitnesses to this incident. Verify that Mr. Roland was back in the motel when he's [sic] father visited him. And Betty Holfield was the one who was gonna come pick him up in a car, a red car.

[PROSECUTOR]: You had told me about the Holfield. You had not mentioned anything about Matthew Gray to me, and I don't know how the fact that he was present at the hotel at some other point is relevant to . . .

[DEFENSE COUNSEL]: It's simply collateral corroboration that he was at a motel. And he had – in fact had money and was gonna go buy a game that he went and bought at the Famous Pawn Shop. He had on him at the time he was . . .

[PROSECUTOR]: Your Honor, I would object to Matthew Gray and the pawn shop, uh, to certainly testifying. Under the rules, defense is required to give the State thirty days' notice of any witnesses. That notice was not complied with that. You did tell me about Betty Holfield, although not giving a formal list. You did tell me about her at a prior court date. So I don't have an address for her, but I won't object to her. But I would object to Mr. Gray and the pawn shop custodian.

THE COURT: Yeah, my understanding is that this case has been pending for quite some time. It's been set and re-set and re-set. Hasn't it?

[DEFENSE COUNSEL]: Yes.

THE COURT: It's the first time I've had it.

[DEFENSE COUNSEL]: Yes.

THE COURT: But it's been – it's been around for . . .

[DEFENSE COUNSEL]: Been continued a couple times.

THE COURT: . . . quite some time. So there's been plenty of opportunity for the defense to disclose its witnesses, its – all right, I'll allow Betty Holfield but not . . .

[DEFENSE COUNSEL]: All right.

THE COURT: . . . Matthew Gray or the . . .

[DEFENSE COUNSEL]: She’s more important anyway.

THE COURT: Okay. But not Matthew Gray . . .

[DEFENSE COUNSEL]: Right.

THE COURT: . . . or the records custodian of the pawn shop.

[DEFENSE COUNSEL]: Okay.

On appeal, appellant contends that the court abused its discretion in prohibiting the defense from calling these witnesses. Appellant asserts that the court employed a double-standard in that the court is more likely to disqualify defense witnesses than prosecution witnesses. Furthermore, appellant maintains that disqualifying these witnesses impinged upon his constitutional right to present a defense. Appellant concedes that he failed to properly identify these witnesses to the State, as required pursuant to Rule 4-263(e)(1), but he maintains that a more appropriate sanction would have been to continue the case or to permit the prosecutor some time to question the prospective witnesses.⁴

We conclude, however, that defense counsel acquiesced in the court’s ruling. *See Banks v. State*, 213 Md. App. 195, 203 (2013) (observing that “there is no basis to appeal”

⁴ Rule 4-263(e)(1) provides, in part: “Without the necessity of a request, the defense shall provide to the State’s Attorney: [t]he name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness.” Subsection (h)(2) of the rule provides that the defense shall make these disclosures “no later than 30 days before the first scheduled trial date,” with an exception inapplicable to this case.

from a ruling in which defense counsel acquiesces (quoting *Green v. State*, 127 Md. App. 758, 769 (1999))). When informed of the court’s decision to disqualify the defense witnesses, defense counsel responded as follows: “All right.”; “She’s [Holfield] more important anyway.”; “Right.”; and “Okay.” Accordingly, defense counsel did not challenge the court’s ruling and made no effort to present the arguments he makes to this Court to the circuit court. Accordingly, he acquiesced in the court’s decision to disqualify the witnesses, and he has waived this issue for our review.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**